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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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| ADELE SIDOCK,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>THE CITY OF CHULA VISTA,<br><br>Defendant and Respondent. | D048075<br><br><br><br>(Super. Ct. No. GIS15970) |

APPEAL from a judgment of the Superior Court of San Diego County, William S. Cannon, Judge. Affirmed.

I.

INTRODUCTION

Plaintiff Adele Sidock appeals from a judgment entered after the trial court granted summary judgment in favor of defendant City of Chula Vista (City). Sidock sued the City for retaliation and wrongful termination in violation of public policy after she left her job as an administrative office assistant in the City's police department.

During her employment with the City, Sidock had a contentious relationship with her supervisor, Barbara Brookover. At one point during Sidock's employment with the police department, Brookover physically prevented Sidock from leaving Brookover's office by placing her hands on Sidock's shoulders and blocking Sidock's access to the door. Sidock reported this incident to Brookover's supervisor, who was a captain with the Chula Vista Police Department. Sidock alleges that after she reported this incident, Brookover retaliated against her, causing Sidock to leave her job with the City.

In deciding the City's motion for summary judgment, the trial court concluded that Sidock could not establish, as a matter of law, all of the necessary elements of her causes of action. With regard to Sidock's cause of action for retaliation, the court determined that Sidock could not show that the City had subjected her to an adverse employment action, or that an adverse employment action was causally linked to her reporting Brookover's behavior. As to Sidock's cause of action for wrongful termination in violation of public policy, the trial court determined that the public policy purportedly violated by Sidock's termination was not a policy that affects the public, but rather, that only Sidock's personal interests were affected.

We conclude that Sidock cannot establish, as a matter of law, that she suffered actionable retaliation or wrongful termination in violation of public policy at the hands of the City. We therefore affirm the trial court's judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND[1]

Sidock became an administrative assistant in the City's police department in March 2001. Brookover was Sidock's supervisor. Sidock and Brookover initially got along well, although Sidock believed that Brookover's management style was too friendly. In November 2001, Brookover sent Sidock an e-mail in which she said, "I sense a little animosity lately . . . Did I say or do something that offended you?" Sidock thought this was an unusual comment, since she did not believe she had done anything that would give Brookover the impression that Sidock harbored animosity toward Brookover. Brookover reiterated her inquiry a month later. In response, Sidock assured Brookover that she felt no animosity toward Brookover.

In December 2001, Sidock and Brookover had a misunderstanding regarding whether there was work at the office that Brookover's daughter could do. Sidock had apparently promised the work opportunity to the son of a coworker. The conversation between Sidock and Brookover ended badly, with Brookover walking away and slamming the door to her office. After this incident, in December 2001, Sidock sought advice from Brookover's superior, Captain Ken Dyke, as to how she should handle the situation. Sidock noticed that after her meeting with Dyke, Brookover's behavior toward her changed. Brookover was less friendly. In addition, although in the past Brookover

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1 Because this appeal is from the grant of summary judgment in favor of the City, we review the evidence in the light most favorable to Sidock. (*Fischer v. First Internat. Bank* (2003) 109 Cal.App.4th 1433, 1438.)

had rarely reviewed letters Sidock prepared before they were mailed, Brookover began to review such documents more frequently.

On April 17, 2002, Brookover attempted to use Sidock's computer, but the computer was locked. Brookover and Sidock exchanged e-mails about the matter, and agreed to discuss it the following day. On April 18, 2002, Sidock and Brookover met in Brookover's office to discuss the issue. Sidock sat at Brookover's desk and attempted to access the City's electronic network using her own profile. When it was time for Sidock to enter her password, she asked Brookover to look away. Brookover became upset and told Sidock that she was insulted. Brookover repeatedly stated, "I can't believe you don't trust me. I can't believe you asked me to look away. I just can't believe it."

Sidock got up from the desk and attempted to leave Brookover's office. Brookover positioned herself between Sidock and the door to the office, blocking Sidock from leaving, and placed her hands on Sidock's shoulders. As she placed her hands on Sidock's shoulders, Brookover's arms were straight with her fingers pointing upward. Sidock repeatedly asked Brookover to step aside. Brookover stated, "I want you to agree this isn't an issue." Sidock was unclear as to what Brookover meant and asked for clarification. Brookover just repeated, "I want you to agree this is not an issue." Brookover's voice was raised and she appeared to be angry. Brookover eventually allowed Sidock to leave the office.

Sidock reported this incident to Assistant Police Chief Zoll, who referred the matter to Captain Dyke. Dyke conducted an investigation during which he interviewed

both Sidock and Brookover. Dyke instructed Brookover to limit her communications with Sidock while the investigation was ongoing.

Sidock noticed a change in her working conditions after the April 18 incident. Prior to the incident, Brookover held staff meetings only occasionally. After April 18, Brookover held staff meetings frequently and "interrogated" Sidock at the meetings regarding her work performance. Brookover delegated some of Sidock's tasks to other employees without explanation. On a number of occasions, in front of other employees, Brookover gave work Sidock had done back to Sidock to make minor changes. Sidock believed Brookover was doing this just to harass Sidock, since Sidock could not recall Brookover having accused her of inaccuracies in her work prior to the April 18 incident.

Brookover would come out of her office at least once a week and, in an accusatory tone, ask Sidock, "Did you say something?" Sidock would deny having said anything. Brookover would then say something like, "Well I was sure I heard you say something." During this time period, Brookover isolated Sidock. Brookover would fail to acknowledge Sidock's presence, yet would sit with Sidock's coworkers for long periods of time, talking about the weather, making jokes, and giggling. According to Sidock, Brookover would not make eye contact with Sidock after April 18. Prior to the April 18 incident, Brookover had assigned work to Sidock in person; after that date, Brookover assigned work to Sidock only in writing.

After April 18, Brookover insisted on reviewing all of Sidock's outgoing letters and reports, and also reviewed Sidock's weekly bulletin before it was distributed. Brookover would give Sidock assignments with unreasonable deadlines, which forced

Sidock to work overtime to complete the projects. Brookover would then criticize Sidock for working overtime. Brookover began invoking a "rule" that workers were not allowed to eat at their desks and forbade Sidock from drinking a soda at her desk during her lunch hour. At least one of Sidock's coworkers was allowed to violate the "rule" without reprisal from Brookover.

In May 2002, Brookover prepared a performance review of Sidock's work. In the review, Brookover appraised Sidock's overall performance as "Acceptable." On the form, Brookover was asked to rate Sidock's performance in a number of different areas, on a scale ranging from poor performance in that that area (the first category) to excellent performance in that area (the fourth category).[2] Brookover gave Sidock ratings predominately in the third category, with a few in the "excellent" category. In two areas, job attitude and employee relationships, Brookover rated Sidock between the second and third categories. Brookover gave Sidock no "poor" ratings. Sidock viewed the evaluation overall as "very good." However, she filed an extensive rebuttal to Brookover's narrative concerning Sidock's attitude about her job. Brookover supplemented the review with

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[2] For each area being reviewed, there was a different scale with different rating options. For example, under the heading "JOB KNOWLEDGE" the options include "Needs to improve in some areas," "Has average knowledge needed," "Has average knowledge and is working towards improvement," and "Effectively uses broad and complete job experience skills," while under the heading "SELF-CONFIDENCE" the options include "Expresses lack of self-confidence hindering performance," "Demonstrates overconfidence which hinders performance," "Self-confidence is adequate for most situations," and "Shows high degree of self-confidence resulting in good decisions."

documentation of absences and tardiness, but did not respond to Sidock's rebuttal on the issue of her attitude. Sidock filed a final response in July.

Sidock inquired of Captain Dyke numerous times regarding the status of his investigation into the April 18 incident. Dyke had promised Sidock that he would have a resolution of the matter by August 1, 2002. On September 3, Sidock met with Dyke's supervisor, Police Chief Emerson, to discuss the status of the City's investigation, since the matter had not yet been resolved. She informed Chief Emerson that she had tested for, and met, the requirements for four positions in other areas of the City. Sidock turned in a request for a transfer, seeking to remain in the City's employ.

Sidock met with Chief Emerson again on September 18. Chief Emerson acknowledged that the investigation was taking too long, and apologized for the delay. He told Sidock that he would impose a deadline by which Captain Dyke would have to conclude the investigation. Emerson said that if Dyke failed to meet the deadline, Emerson would complete the investigation himself.

Sidock met with Captain Dyke on September 30. Sidock's union representative, Rodrigo Viesca, accompanied her to the meeting. Dyke informed Sidock that he felt there was insufficient evidence to support her complaint because there were no eyewitnesses to the April 18th incident, and that he had concluded that Sidock's complaint was unfounded. Sidock asked Dyke whether he had interviewed any of the people who had been outside Brookover's office door on April 18. Dyke told Sidock that information as to who he had interviewed was confidential, and informed her that she would not be allowed access to documentation regarding his investigation.

Viesca told Dyke that Sidock had the right to ask the city attorney to investigate the matter. Dyke responded that Sidock could challenge his determination, but suggested that the city attorney would agree with his conclusions and would not pursue any further action. Dyke informed Sidock that if this were to occur, Brookover could sue Sidock. He told Sidock that she should keep this in mind in deciding how to proceed.

At Brookover's request, Sidock, accompanied by her union representative, met with Brookover and Dyke on October 23. Brookover brought a 12-inch thick stack of papers documenting what she referred to as "proof of errors." Brookover discussed a number of minor errors Sidock had made in typing and photocopying. She accused Sidock of staying late or coming in early to make entries in the databases—allegations that Sidock contends are false. Brookover said she was concerned with Sidock's productivity, and questioned whether Sidock liked her job. Brookover stated that she wanted Dyke to be included in all future meetings concerning Sidock's performance, and also indicated that she was going to review all information that left the unit, referring specifically to an incident in which Sidock allegedly provided inaccurate responses to a police sergeant. Sidock asserted that Brookover had fabricated this incident.

Sidock became physically ill after the October 23, 2002 meeting, and did not want to return to work. Sidock went on family and medical leave, beginning on October 24, 2002. Sidock went to see her doctor on October 25. Sidock's doctor diagnosed her as suffering from anxiety, which caused her to experience panic attacks, nausea, and elevated blood pressure. Sidock's doctor ordered her not to return to work.

Sidock remained on family and medical leave until January 15, 2003. On January 16, the City's disability manager sent Sidock a letter informing her that her family and medical leave time had expired, and that she could request a leave of absence for up to a year. Sidock told the disability manager that her doctors would not allow her to go back to work under Brookover's supervision. The disability manager informed Sidock that because she was not on any form of leave or disability and did not want to return to her position, her choices were either to voluntarily resign, or to be separated from employment by the City. Sidock did not respond. The City wrote to Sidock on February 17, 2003, informing her that her employment had been terminated.

III.

DISCUSSION

A. *Standard of review*

Summary judgment is proper when "all the papers submitted show there is no triable issue as to any material fact" such that "the moving party is entitled to judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) We review an order granting summary judgment *de novo*: "'In evaluating the correctness of a ruling under [Code of Civil Procedure] section 437c, we must independently review the record before the trial court. Because the grant or denial of a motion under [Code of Civil Procedure] section 437c involves pure questions of law, we are required to reassess the legal significance and effect of the papers presented by the parties in connection with the motion. [Citation.]'" (*Ranchwood Communities Limited Partnership v. Jim Beat Construction Co.* (1996) 49 Cal.App.4th 1397, 1408.) On appeal, this court applies the same rules the

trial court applied in deciding the motion for summary judgment. (*Colores v. Board of Trustees* (2003) 105 Cal.App.4th 1293, 1303 (*Colores*).)

A defendant who moves for summary judgment must establish that he has "'met' his 'burden of showing that a cause of action . . . cannot be established.'" (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 849 (*Aguilar*).) "[G]enerally, from commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. . . . There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id*. at p. 850, fns. omitted.)

A defendant who moves for summary judgment need not "conclusively negate an element of the plaintiff's cause of action. . . . [A]ll that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action ─ for example, that the plaintiff cannot prove element X. Although he remains free to do so, the defendant need not himself conclusively negate any such element ─ for example, himself prove not X. . . ." (*Aguilar, supra*, 25 Cal.4th at pp. 853-854, fns. omitted.)

B. *Sidock cannot establish all of the elements of her retaliation claim*

Sidock contends that the trial court erred in granting the City's motion for summary judgment because there are triable issues of fact pertaining to her claim for retaliation. The trial court determined that, as a matter of law, Sidock failed to establish a prima facie case of retaliation because she failed to establish that the City took any

adverse action against her or that there was a causal link "between [Sidock's] reporting of the battery incident and her termination or other adverse employment action . . . ."

Sidock's retaliation claim is based on her allegation that the City violated Labor Code section 1102.5, subdivision (b), which provides:

> "An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation."

"'"To establish a prima facie case of retaliation, a plaintiff must show that she engaged in protected activity, that she was thereafter subjected to adverse employment action by her employer, and there was a causal link between the two."' [Citations.]" (*Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 69 (*Morgan*).) Sidock contends that the trial court erred in concluding that she could not establish the existence of an adverse employment action or a causal connection between her reporting of the April 18th incident and the adverse employment action, as a matter of law. We conclude based on the record before us that Sidock cannot establish that she was subjected to an adverse employment action by the City. Consequently, Sidock's retaliation claim fails.

1. *Adverse employment action*

In *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028 (*Yanowitz*), the California Supreme Court considered what constitutes an adverse employment action for purposes of a cause of action under California Fair Employment and Housing Act

(FEHA) (Gov. Code, § 12900 et seq.).[3] The *Yanowitz* court concluded that an adverse employment action is conduct that "materially affects the terms, conditions, or privileges of employment." (*Yanowitz, supra*, 36 Cal.4th at p. 1051.)

Under the materiality test, a court may consider "the entire spectrum of employment actions that are reasonably likely to adversely and materially affect an employee's job performance or opportunity for advancement in his or her career" (*Yanowitz, supra,* 36 Cal.4th at p. 1052.) "Retaliation claims are inherently fact specific, and the impact of an employer's action in a particular case must be evaluated in context. Accordingly, although an adverse employment action must materially affect the terms, conditions, or privileges of employment to be actionable, the determination of whether a particular action or course of conduct rises to the level of actionable conduct should take into account the unique circumstances of the affected employee as well as the workplace context of the claim." (*Ibid.*)

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3 *Yanowitz* deals with an allegation of unlawful discrimination in violation of Government Code section 12940, subdivision (h). (*Yanowitz, supra*, 36 Cal.4th at p. 1042.) In order to prevail on a claim under that provision, a plaintiff must prove that he or she was subjected to an adverse employment action, just as a plaintiff seeking relief pursuant to section 1102.5 must do. (See *ibid.*; *Morgan, supra*, 88 Cal.App.4th at p. 69.) We believe that the *Yanowitz* court's conclusion as to what constitutes an adverse employment action for purposes of a claim for retaliation under FEHA should apply with equal force to Sidock's claims for retaliation under the Labor Code. (See *McRae v. Department of Corrections & Rehabilitation* (2006) 142 Cal.App.4th 377, 386 (*McRae*) [suggesting application of *Yanowitz* test regarding the existence of an adverse action beyond the FEHA context by stating, "In California, an employee *seeking recovery on a theory of unlawful discrimination or retaliation* must demonstrate that he or she has been subjected to an adverse employment action that materially affects the terms, conditions, or privileges of employment . . . . [Citation.]" (Italics added.))

The requirement that an employee "'prove a substantial adverse job effect "guards against both 'judicial micromanagement of business practices' [citation] and frivolous suits over insignificant slights." [Citation.]'" (*McRae, supra*, 142 Cal.App.4th at p. 387.) "'Absent this threshold showing, courts will be thrust into the role of personnel officers, becoming entangled in every conceivable form of employee job dissatisfaction. While the Legislature was understandably concerned with the chilling effect of employer retaliatory actions and mandated that FEHA provisions be interpreted broadly to prevent unlawful discrimination, it could not have intended to provide employees a remedy for any possible slight resulting from the filing of a discrimination complaint.' [Citation.]" (*Ibid.*)

An adverse employment action need not be a single allegedly retaliatory act. Rather, it is appropriate to "consider [a] plaintiff's allegations collectively, under a totality of the circumstances approach." (*Yanowitz, supra*, at pp. 1052, fn. 11.)

> "As a threshold matter, we need not and do not decide whether each alleged retaliatory act constitutes an adverse employment action in and of itself. Yanowitz has alleged that L'Oreal's actions formed a pattern of systematic retaliation for her opposition to Wiswall's discriminatory directive. Contrary to L'Oreal's assertion that it is improper to consider collectively the alleged retaliatory acts, there is no requirement that an employer's retaliatory acts constitute one swift blow, rather than a series of subtle, yet damaging, injuries." (*Id.* at p. 1055.)

"'[W]orkplace harassment, if sufficiently severe or pervasive, may in and of itself constitute an adverse employment action sufficient to satisfy the second prong of the prima facie case for . . . retaliation cases.' [Citation.]" (*Yanowitz, supra*, 36 Cal.4th at p. 1056, fn. 16.) A court's analysis of workplace conduct should thus include

consideration of "'the relative ubiquity of the retaliatory conduct, its severity, its natural tendency to humiliate . . . a reasonable person, and its capacity to interfere with the plaintiff's work performance.'" (*Id*. at p. 1060, quoting *Noviello v. City of Boston* (2005) 398 F.3d 76.) The Yanowitz court explained:

> "As the high court recognized in *Harris* [*v. Forklift Sys., Inc.* (1993) 510 U.S. 17, 21], the determination of what type of adverse treatment properly should be considered discrimination in the terms, conditions, or privileges of employment is not, by its nature, susceptible to a mathematically precise test, and the significance of particular types of adverse actions must be evaluated by taking into account the legitimate interests of both the employer and the employee. Minor or relatively trivial adverse actions or conduct by employers or fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment and are not actionable, but adverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion falls within the reach of the antidiscrimination provisions of sections 12940(a) and 12940(h)." (*Yanowitz, supra*, 36 Cal.4th at pp. 1054-1055.)

2. *Sidock cannot establish that she was subjected to an adverse employment action*

Sidock attempts to equate the facts of her case with the "campaign of retaliation" discussed in *Yanowitz, supra*, 36 Cal.4th at page 1052. Sidock points to the following conduct by Brookover as comprising the alleged adverse employment action: "lying about Ms. Sidock in front of other employees, humiliating Ms. Sidock in front of coworkers, singling out Ms. Sidock, accusing Ms. Sidock of talking behind her supervisor's back, isolating Ms. Sidock, forcing Ms. Sidock to work overtime and then criticizing her for doing so, harassing Ms. Sidock with constant petty requests, [and]

interrogating Ms. Sidock in staff meetings for no reason." Sidock also asserts that "the captain's inexcusable delay in investigating the April 18th incident" and his "oppressive comments during the September meeting" constitute further support for her contention that she was subjected to an adverse employment action. After considering the alleged acts of harassment and retaliation collectively, we conclude that these acts do not constitute an adverse employment action under the relevant standard, in that they do not materially affect the terms, conditions, or privileges of employment. (See *Yanowitz, supra*, 36 Cal.4th at p. 1060.)

The plaintiff in *Yanowitz* alleged a pattern of systematic retaliation that included unwarranted negative performance evaluations; L'Oreal's refusal to allow Yanowitz to respond to the allegedly unwarranted criticism; unwarranted criticism from Yanowitz's supervisor in the presence of Yanowitz's associates and other employees and a "humiliating" public reprobation by her supervisor's supervisor; a refusal of Yanowitz's request to provide necessary resources and assistance to an employee, thereby fueling employee resentment for which Yanowitz was chastised in her performance reviews; and Yanowitz's supervisor's solicitation of negative feedback about Yanowitz from her staff. (*Yanowitz, supra*, 36 Cal.4th at p. 1055.)

The *Yanowitz* court concluded that the actions by Yanowitz's supervisors "constituted more than mere inconveniences or insignificant changes in job responsibilities." (*Yanowitz, supra*, 36 Cal.4th at p. 1060.) Rather, the "[m]onths of unwarranted and public criticism of a previously honored employee, an implied threat of termination, contacts with subordinates that only could have the effect of undermining a

manager's effectiveness, and new regulation of the manner in which the manager oversaw her territory" was more than an "inconvenience" to Yanowitz, as they "placed her career in jeopardy." (*Ibid*.)

The conduct at issue here differs in degree from the conduct at issue in *Yanowitz*. Unlike the plaintiff in *Yanowitz*, Sidock received a generally positive review from Brookover even after she reported the April 18th incident to Brookover's supervisor. There was no implied threat of termination, nor other conduct that could be characterized as placing Sidock's career "in jeopardy." The conduct about which Sidock complains includes Brookover's heightened scrutiny of Sidock's work, the delegation of some of Sidock's work to other employees, personal slights by Brookover, and Brookover's poor office demeanor. None of this would suggest to Sidock that her job was in jeopardy.

Further, it is not clear that Brookover singled out Sidock for poor treatment. Brookover appears to have behaved in a similar manner toward other employees. Sidock acknowledges that one of her coworkers often emerged from Brookover's office in tears. Sidock mentioned that Brookover "would always, always, take issue with" the appearance of one of Sidock's coworker's reports. Brookover would "nitpick" the work of a number of other employees as well. All of this suggests that Brookover's conduct was not directed at Sidock in retaliation for her reporting the April 18th incident, but rather, that Brookover may have been a difficult manager whose personality created conflict in the office. Brookover's behavior resulted in what might be termed "commonplace indignities typical of the workplace" (*Yanowitz., supra*, 36 Cal.4th at p. 1060), not a violation of a "whistle-blower" protection statute.

Although the question whether a defendant's conduct constitutes an adverse employment action is generally a factual one, this case presents a situation in which we can conclude, as a matter of law, that the conduct is insufficient to amount to an adverse employment action. Because Sidock cannot establish, as a matter of law, that she was subjected to an adverse employment action by the City, she cannot prevail on her claim for retaliation.

B. *Sidock cannot establish a claim for wrongful termination in violation of public policy*

Sidock contends that the trial court erred in concluding that she could not establish a cause of action for wrongful termination in violation of public policy. Sidock's claim of wrongful termination rests on a theory of constructive discharge, in that Sidock maintains that her working conditions were so intolerable that she was forced to leave her position. However, even assuming that Sidock could prove that she was constructively discharged,[4] she has not shown that the alleged constructive discharge implicates the kind of fundamental public policy that is required in order to establish the tort of wrongful termination in violation of public policy. The City was thus entitled to summary adjudication of Sidock's cause of action for wrongful termination in violation of public policy.

"In order to establish a constructive discharge, an employee must plead and prove, by the usual preponderance of the evidence standard, that the employer either

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4 We assume for purposes of our discussion, without deciding, that Sidock could establish that she was constructively discharged.

intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign. [¶] For purposes of this standard, the requisite knowledge or intent must exist on the part of either the employer or those persons who effectively represent the employer, i.e., its officers, directors, managing agents, or supervisory employees." (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1251 (*Turner*).)

Sidock must establish more than just a constructive discharge in order to make out a claim for recovery: "Standing alone, constructive discharge is neither a tort nor a breach of contract, but a doctrine that transforms what is ostensibly a resignation into a firing. Even after establishing *constructive* discharge, an employee must independently prove a breach of contract or tort in connection with employment termination in order to obtain damages for *wrongful discharge*. [Citation.]" (*Turner, supra,* 7 Cal.4th at p. 1251.) For instance, an employee could make a case for wrongful termination by establishing that the constructive discharge was a breach of the employment contract. (*Ibid.*)

If there has been no breach of an employment contract, an employee may still have a claim for wrongful termination based on constructive discharge if the constructive discharge violates a public policy. "Apart from the terms of an express or implied employment contract, an employer has no right to terminate employment for a reason that contravenes fundamental public policy as expressed in a constitutional or statutory provision. [Citation.]" (*Turner, supra,* 7 Cal.4th at p. 1252.) "An actual or constructive

discharge in violation of fundamental public policy gives rise to a tort action in favor of the terminated employee. [Citations.]" (*Ibid*., citing *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 665-671 (*Foley*) and *Tameny v. Atlantic Richfield Co*.[5] (1980) 27 Cal.3d 167, 170, 178 [" . . . the relevant authorities both in California and throughout the country establish that when an employer's discharge of an employee violates fundamental principles of public policy, the discharged employee may maintain a tort action and recover damages traditionally available in such actions."].)

Sidock asserts that her constructive discharge violated public policy because the discharge resulted from the fact that she reported Brookover's criminal conduct to Brookover's superior, a police captain. As Sidock describes it, she "reported wrongdoing, i.e., assault and battery, which was occurring in public employment, i.e., the Chula Vista Police Department." She contends that she was terminated "for reporting illegal activity," and that this "illegal activity . . . causes harm, not only to her individually, but also to the public's interest in keeping public employment free from wrongdoing."

"In order to sustain a claim of wrongful discharge in violation of fundamental public policy, [the plaintiff] must prove that his [her] dismissal violated a policy that is (1) fundamental, (2) beneficial for the public, and (3) embodied in a statute or constitutional provision. [Citation.]" (*Turner, supra*, 7 Cal. 4th at p. 1256, fns. omitted; see also *Colores, supra*, 105 Cal. App. 4th at p. 1307.) "Tort claims for wrongful

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5 Claims for wrongful termination in violation of public policy are often referred to as *Tameny* claims. (See, e.g., *Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495, 506.)

discharge typically arise when an employer retaliates against an employee for '(1) refusing to violate a statute . . . [,] (2) performing a statutory obligation . . . [,] (3) exercising a statutory right or privilege . . . [, or] (4) reporting an alleged violation of a statute of public importance.' [Citation.]" (*Turner, supra*, 7 Cal. 4th at p. 1256.) Even where there has been an alleged violation of a statute to support the claim, a court "must still inquire whether the discharge is against public policy and affects a duty which inures to the benefit of the public at large rather than to a particular employer or employee." (*Foley, supra,* 47 Cal.3d at p. 669.)

The *Foley* case is particularly instructive for purposes of analyzing Sidock's claim. In *Foley*, the plaintiff alleged that he was discharged after he reported to his supervisor that the individual who had been hired to become his new supervisor was under investigation by the Federal Bureau of Investigation for embezzlement. (*Foley, supra,* 47 Cal.3d. at p. 664.) According to the plaintiff, he reported this information to his supervisor "because he was 'worried about working for Kuhne and having him in a supervisory position . . . , in view of Kuhne's suspected criminal conduct.'" (*Ibid*.) The plaintiff "asserted he 'made this disclosure in the interest and for the benefit of his employer,' allegedly because he believed that because defendant and its parent do business with the financial community on a confidential basis, the company would have a legitimate interest in knowing about a high executive's alleged prior criminal conduct." (*Ibid*.) The plaintiff asserted that his discharge was "in 'sharp derogation' of a substantial public policy that imposes a legal duty on employees to report relevant business information to management." (*Id.* at p. 669.)

The *Foley* court concluded that the public policy the plaintiff asserted was not "a substantial public policy prohibiting an employer from discharging an employee for performing that duty." (*Foley, supra*, 47 Cal.3d at p. 670.) The court looked to prior decisions in which courts had recognized "a tort action for discharge in violation of public policy," and noted that those decisions "seek to protect the public, by protecting the employee who refuses to commit a crime [citations], who reports criminal activity to proper authorities [citations], or who discloses other illegal, unethical, or unsafe practices [citations]." (*Ibid*.) The Foley court went on to conclude that "[n]o equivalent public interest bars the discharge of the present plaintiff" because "[w]hen the duty of an employee to disclose information to his employer serves only the private interest of the employer, the rationale underlying the *Tameny* cause of action is not implicated." (*Foley, supra*, 47 Cal.3d at pp. 670-671, fns. omitted.)

As was the case in *Foley*, the conduct Sidock contends resulted in her termination, i.e., the reporting of a technical battery[6] committed against her at her workplace, does not affect the public at large, unlike the reports of the criminal conduct at issue in cases Sidock cites, such as *Shoemaker v. Myers* (1992) 2 Cal.App.4th 1407, 1419-1420 [public employee discharged after filing a report that high ranking officials had improperly approved funding for clinics using lay workers to perform tasks that were required to be

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6 Penal Code section 242 defines a battery as "any willful and unlawful use of force or violence upon the person of another." Accepting Sidock's allegations as true for purposes of summary judgment, Brookover's use of force falls within this definition, and she thus committed a technical battery.

done by licensed medical professionals] and *Southern California Rapid Transit District v. Superior Court* (1994) 30 Cal.App.4th 713, 725 [transit district workers alleged that their terminations were in retaliation for reports they made regarding suspected forgery, fraud, mismanagement and an official cover-up in connection with the certification of a minority contractor]. Sidock's reporting of her supervisor's conduct served only Sidock's personal interest, and thus does not implicate a duty that inures to the benefit of the public at large. (See *Foley, supra*, 47 Cal.3d at pp. 669-671.)

Because Sidock cannot establish that her alleged constructive discharge implicates the kind of fundamental public policy that is required to establish the tort of wrongful termination in violation of public policy, summary adjudication in favor of the City on this cause of action is proper.

C. *The trial court's evidentiary rulings*

Sidock maintains that the trial court should not have sustained the City's objections to portions of Sidock's declaration submitted in opposition to the City's summary judgment motion in which she (1) related details of certain interactions she had with Captain Dyke, and (2) offered examples of how Brookover's actions obstructed her from performing her job. The City objected to this evidence, arguing that the details of Sidock's interactions with Captain Dyke and her descriptions of how Brookover prevented her from doing her job were immaterial because Sidock's complaint was based

only on Brookover's alleged harassment of Sidock.[7] The trial court sustained the City's objections to this evidence.

Although we question the propriety of the trial court's evidentiary rulings pertaining to this evidence,[8] we need not determine whether the trial court abused its discretion in excluding the evidence because Sidock suffered no prejudice from its exclusion. Even if we were to consider this additional evidence, we would still conclude that Sidock cannot establish either that she was subjected to an adverse employment action or that her alleged constructive discharge was in violation of a fundamental public policy.

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[7] It appears from the City's objection to Sidock's testimony as to how Brookover's conduct obstructed her from performing her job that the City believes this evidence was immaterial because it addressed an "additional theor[y]" at too late a stage in the proceedings. However, it seems clear that Sidock presented this evidence in support of her cause of action for retaliation, and specifically, in support of her allegation that she had been subjected to an adverse employment action. (See *Yanowitz, supra*, 36 Cal.4th at p. 1054 [noting courts may consider "the entire spectrum of employment actions that are reasonably likely to adversely and materially affect an employee's job performance or opportunity for advancement in his or her career" when assessing whether a plaintiff was subjected to an adverse employment action].) The trial court did not provide any reason for its decision to sustain the immateriality objection to this evidence.

[8] Our review of this evidence and the record leads us to conclude that this excluded testimony was, contrary to the City's asserted objection, very likely both material and relevant to the City's summary judgment motion, and that it did not necessarily raise additional theories of liability.

IV.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

NARES, Acting P. J.

McINTYRE, J.